

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Parts 740 and 745**

**RIN 3133-AD55**

**Display of Official Sign; Temporary Increase in Standard Maximum Share  
Insurance Amount; Coverage for Custodial Loan Accounts**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** NCUA is amending its share insurance rules to reflect Congress's recent action to increase temporarily the standard maximum share insurance amount (SMSIA) from \$100,000 to \$250,000 and increase coverage for custodial loan accounts. NCUA

also is providing insured credit unions with additional options for displaying NCUA's official sign.

**DATES:** This rule is effective October 22, 2008. Written comments must be received on or before December 22, 2008.

**ADDRESSES:** You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:  
[http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.htm](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.htm). Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "[Your name] Comments on Share Insurance Coverage and Official Sign" in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

**PUBLIC INSPECTION:** All public comments are available on the agency's website at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may

not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Frank Kressman, Staff Attorney, at the above address, or telephone: (703) 518-6540.

## **Supplementary Information**

### **I. Background**

#### **A. Temporary Increase in Share Insurance Coverage**

The Emergency Economic Stabilization Act of 2008 temporarily increases the standard maximum share insurance amount (SMSIA) from \$100,000 to \$250,000, effective October 3, 2008 and ending December 31, 2009. Pub. L. No. 110-343 (October 3, 2008). After that period, the SMSIA will, by law, return to \$100,000. The interim final rule amends NCUA's share insurance regulations to reflect the temporary increase in the SMSIA.

#### **B. Custodial Loan Accounts**

Until this rulemaking, NCUA insured custodial loan accounts somewhat differently from how the Federal Deposit Insurance Corporation (FDIC) insured these kinds of accounts, which FDIC refers to as mortgage servicing accounts. This interim final rule changes the topic heading for the provision currently titled custodial loan accounts, §745.3(a)(3), so it will read “mortgage servicing accounts.” Also, the rule expands share insurance coverage for this type of account by insuring the principal and interest portion of a mortgagor’s payment separately from the mortgagor’s individual accounts. As in the current regulations, the taxes and insurance premiums portion of a mortgagor’s payment will continue to be added together with the mortgagor’s individual accounts and insured in the aggregate. This provision will be uniform with the coverage provided by FDIC.

In brief, NCUA has considered all portions of a payment, including principal, interest, taxes, and insurance premiums, in such an account as the individually owned funds of the mortgagor/borrower. NCUA would aggregate payments with the owner’s other individual accounts and insure them on a pass-through basis up to the SMSIA as a single ownership account. 12 CFR §745.3(a)(3). By contrast, FDIC considered the principal and interest portion of a payment in a mortgage servicing account as owned by and insured on a pass-through basis for the interest of the mortgagee/investor or security holder. FDIC considered the taxes and insurance premiums portion of a payment as owned by and insured on a pass-through basis for the interest of the mortgagor. FDIC added deposits for taxes and insurance premiums with other agency

or nominee accounts where the mortgagor was the principal and insured them up to the standard insurance amount for single ownership accounts. 12 CFR §330.7(d).

FDIC has recently simplified the manner in which it insures mortgage servicing accounts because securitization methods and vehicles for mortgages have become more layered and complex, making it more difficult and time-consuming for a servicer to identify and determine the share of any investor in a securitization and in the principal and interest funds on deposit at an insured depository institution. FDIC believes this simplification will also prevent unexpected losses to investors who have far in excess of the current \$250,000 per-depositor insurance limit.

Specifically, as a result of its recent interim final rule, FDIC will provide insurance coverage on a per-mortgagor/borrower basis for both principal and interest payments and payments for taxes and insurance premiums. This is how NCUA currently insures mortgage servicing accounts. FDIC will insure a mortgagor's payment of principal and interest in a mortgage servicing account on a pass-through basis up to the current temporary \$250,000 limit separate from any other accounts of that mortgagor. NCUA believes this treatment of principal and interest payments would provide greater and fairer coverage for credit union members and will take the same approach in its share insurance rules. FDIC also will insure a mortgagor's payment of taxes and insurance premiums in a mortgage servicing account on a pass-through basis but will add these funds to other individually owned funds held by that mortgagor at the same insured

institution up to the current temporary \$250,000 limit. This is how NCUA currently addresses this situation.

### **C. Official Sign**

The temporary increase in the SMSIA from \$100,000 to \$250,000 until December 31, 2009 calls into question the usefulness of NCUA's official sign, as depicted in Part 740 of NCUA's rules, which includes a statement that member shares are insured to at least \$100,000. Obviously, that understates the actual temporary coverage limit of \$250,000. NCUA knows from recent experience in revising the official sign that requiring credit unions to replace the current sign with a revised sign would be an expensive and burdensome process. NCUA recognizes the need to balance this burden, which is especially heavy given the insurance increase is only temporary, with the need and desire to inform members they have increased insurance coverage to \$250,000. In this regard, NCUA will revise its rules to provide insured credit unions with maximum flexibility. Specifically, insured credit unions will have the option to: 1) continue to display the current official sign in Part 740, reflecting the \$100,000 limit, without penalty; 2) display any other version of the official sign distributed or approved by NCUA and appearing on NCUA's official website through December 31, 2009 that reflects the temporary increase to \$250,000; or 3) alter by hand or otherwise the current official sign to make it reflect the increase to \$250,000 provided the altered sign is legible and otherwise complies with Part 740. An example of how an insured credit union could alter the sign by hand is to affix a sticker that reads "\$250,000" over the portion of the

current sign that reads “\$100,000.” Also, insured credit unions that do not change or alter the official sign can inform members about the temporary increase in account insurance through additional signage, for example, posting a sign in their lobbies or a notice on their websites that for the period October 3, 2008 through December 31, 2009, accounts are insured for \$250,000 per account.

## **II. Effective date of the interim rule**

This interim rule is effective on October 22, 2008. In this regard, NCUA invokes the good cause exception to the requirements in the Administrative Procedure Act (APA), 5 U.S.C. 553, that provides, before a rulemaking can be finalized, it must first be issued for public comment and, once finalized, must have a delayed effective date of thirty days from the publication date. NCUA believes good cause exists for making the interim rule effective immediately. The interim rule complies with a statutory mandate raising the SMSIA, provides more share insurance coverage to credit union members, provides additional flexibility to credit unions in displaying the official sign, and helps to maintain parity between NCUA’s share insurance program and FDIC’s deposit insurance program.

For these reasons, NCUA has determined that the public notice and participation that ordinarily are required by the APA before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the

customary 30-day delayed effective date. Nevertheless, NCUA desires to have the benefit of public comment before adopting a permanent final rule and, thus, invites interested parties to submit comments during a 60-day comment period. In adopting the final regulation, NCUA will revise the interim rule, if appropriate, in light of the comments received on the interim rule.

### **III. Regulatory Procedures**

#### Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This interim final rule implements enhanced share insurance coverage and provides flexibility to credit unions.

Accordingly, it will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

#### Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

#### The Treasury and General Government Appropriations Act, 1999--Assessment of Federal Regulations and Policies on Families



NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub.L. 105-277, 112 Stat. 2681 (1998).

#### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA does not believe this interim final rule is a “major rule” within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

#### **List of Subjects**

#### **12 CFR Part 740**

Advertisements, Credit Unions, Signs and symbols.

#### **12 CFR Part 745**

Credit unions, Share insurance.

By the National Credit Union Administration Board, this 15 day of October 2008.

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Mary F. Rupp

Secretary of the Board

For the reasons discussed above, NCUA amends 12 CFR Parts 740 and 745 as follows:

## **PART 740 — ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS**

1. The authority citation for Part 740 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1781, 1789.

2. Section 740.4(b)(1) is amended by adding a new sentence to the end to read as follows:

#### **§ 740.4 Requirements for the official sign.**

\* \* \* \* \*

(b) \* \* \*

- (1) \* \* \* To address the temporary increase through December 31, 2009 in the standard maximum share insurance amount as defined in §745.1(e) of this chapter, insured credit unions may continue to display the official sign depicted in paragraph (b) of this section but should inform members of the increased coverage through additional signage indicating the temporary increase in coverage, display other versions of the official sign distributed or approved by NCUA and appearing on NCUA's official website, or alter by hand or otherwise the official sign depicted in paragraph (b) of this section for that purpose provided the altered sign is legible and otherwise complies with this part.

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#### **PART 745 — SHARE INSURANCE AND APPENDIX**

3. The authority citation for Part 745 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

4. Section 745.1(e) is revised to read as follows:

**§ 745.1 Definitions.**

\* \* \* \* \*

(e) The term “standard maximum share insurance amount,” referred to as the “SMSIA” hereafter, means \$250,000 from October 3, 2008, until December 31, 2009. Effective January 1, 2010, the SMSIA means \$100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)). All examples in this part use \$100,000 as the SMSIA.

5. Section 745.3(a)(3) is revised to read as follows:

**§ 745.3 Single Ownership Accounts.**

(a) \* \* \*

(3) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured for the cumulative amount paid into the account by the mortgagors, up to a limit of the SMSIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a)(2) of this section for the ownership interest of each mortgagor in such accounts. This provision is effective as of October 22, 2008 for all existing and future mortgage servicing accounts.

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